

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3087 OF 2017
(Manisha w/o Dhanraj Bolshette Vs. Channapa s/o Panchappa
Chinchansure)

Mr.T.M.Venjane, Advocate for the petitioner.
Smt.M.D.Thube-Mhase, Advocate for the respondent.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 25/06/2018

PER COURT :

1. The petitioner is aggrieved with the order of the Trial Court dated 23/02/2017 by which application Exh.166 filed by the petitioner / plaintiff in RCS No.350/2009, has been rejected.

2, I have considered the submissions of the learned Advocates for the respective sides and have gone through the 13 grounds formulated by the petitioner in the memo of the petition.

3 The petitioner has preferred the suit after the owner of the suit property, admittedly the defendant, allegedly started disturbing the peaceful possession of the plaintiff who was operating a grocery shop. Injunction has been clamped against the defendant by directing that the defendant shall not disturb the possession of the

plaintiff till decision in the suit.

4. It is contended by the plaintiff that her husband has executed a rent agreement on 01/09/2004 for a period of 12 years with the defendant. This is disputed by the defendant. The plaintiff submits that an amount of Rs.5,000/- per year was the agreed rent. Her husband expired on 13/03/2008. Owing to the disturbance by the defendant, she preferred the suit.

5. The defendant's case is that there was no rent agreement and the plaintiff was not in possession. Application Exh.5, filed by the plaintiff seeking injunction under Order 39 Rule 1 of the CPC, was rejected by the Trial Court on 30/06/2010. The Appellate Court allowed MCA No.11/2010 filed by the plaintiff and clamped injunction upon the defendant. The plaintiff thereafter has forcibly taken the possession of the suit property on the strength of the judgment of the Appellate Court. It is undisputed that the writ petition No.7781/2010 filed by the defendant challenging the judgment of the Appellate Court, has been rejected on 01/10/2010.

6. The issue emerging from this petition and the impugned order is as to whether the plaintiff should be permitted to enter a

statement, by way of an amendment in the plaint, that she has paid the rent for the year 01/09/2016 to 30/08/2017. The case of the plaintiff is that the rent agreement has expired in 2016. If the rent agreement was undisputed between the parties, in my view, the amendment would not be of any relevance. However, if the rent agreement is disputed, then the issue as to whether the plaintiff is entitled to the injunction, will be connected to the issue whether the possession has been acquired lawfully. In the absence of an agreement, the case would rest on other aspects. On these premises, then the request of the plaintiff to enter a statement in the plaint to indicate payment of rent for the year 2016-2017 would be innocuous and its evidentiary value would then be considered by the Trial Court.

7. The defendant contends that the plaintiff is deliberately delaying the suit so as to continue with her illegal possession merely on the basis of payment of rent.

8. Considering the law laid down by the Hon'ble Apex Court in the case of Revajeetu Builders and Developers Vs. Narayanaswami and Sons [(2009) 8 M.L.J. 907 (SC)] and Chakreshwari Constructions Pvt.Ltd., Vs. Manohar Lal [2017(5) SCC 212], merits of the proposed

amendment are not to be assessed. What is to be seen is as to whether it would assist the Trial Court to decide the controversy.

9. Considering the above, this petition is partly allowed. The impugned order dated 23/02/2017 is quashed and set aside. Application Exh.166 is allowed only to the extent of permitting the plaintiff to enter one paragraph which is 5-A in Exhibit 166 on the following conditions :-

[a] The plaintiff would amend the plaint on or before 10/07/2018 and shall not seek an adjournment.

[b] Since the learned Advocate for the respondent graciously submits that the costs be donated to a humane cause, costs of Rs.5,000/- would be deposited by the petitioner with the Government Medical College and Hospital, Aurangabad, **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Draft be drawn in the name of “**Dean, Government Medical College and Hospital, Aurangabad CSR Fund**”) on or before 10/07/2018 and shall report compliance of this direction by producing a receipt of having deposited the amount before the Trial Court on or before 16/07/2018.

[c] The defendant is at liberty to file an additional written statement to oppose the amendment on or before 20/07/2018.

[d] The plaintiff shall cross examine the witnesses of the defendant on Exhibit 132 on or before 20/07/2018 and Exhibit 162 on or before 31/07/2018. Request for adjournment

shall not be accepted.

[e] Non-compliance of the direction to deposit costs, would dis-entitle the plaintiff from introducing the amendment which is granted.

10. The Trial Court shall decide the suit on its own merits and preferably on or before the 28/02/2019 and shall not be influenced by any observations or reasons set out in this order.

(Ravindra V.Ghuge, J.)